



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

NORTH AMERICAN REVIEW.

No. CCCLXXV.

FEBRUARY, 1888.

THE FISHERIES QUESTION.

A STRICT adherence to its title would make this article as brief as the famous chapter on "The Snakes in Ireland," for, properly speaking, there is no "fisheries question." The international dispute which passes under that name is more far-reaching than the interests of a particular industry, and involves not merely the safety and prosperity of a single class of American citizens, but the dignity and honor of the United States. Partly through inattention and partly by the efforts of the administration and its especial friends, the American people have been led to believe that all that is involved in our dispute with Canada and England concerns doubtful treaty constructions and complicated and obscure fishery rights. This, however, is very far from the truth. Our fisheries and our fishermen have been merely the instruments and the victims of a policy by which Canada seeks to extort certain commercial concessions from the United States. The real question now is not whether we shall fish within the three-mile limit, but whether we shall have the ordinary commercial rights in Canadian waters which we extend in our own ports to all civilized people, Canadians included. A very brief review of the history and facts of the case will show that this is the vital and essential question at issue to-day between the United States and Great Britain.

By the treaty of 1783 we retained all the unrestricted fishery rights we had before as subjects of the British Crown, except the right "to dry and cure" on Newfoundland. So jealous, however, was England of our fisheries that the signatures to the Treaty of Paris were hardly dry before the annoyances, restrictions and disputes began which have lasted with intervals until the present time. At the close of the war of 1812 an effort was made, when the Peace Commissioners met at Ghent, to shut us out from the fisheries, and the attempt was defeated by the indomitable firmness of John Quincy Adams, as it had been in 1783 by the vigorous resistance of his father. Still the matter remained troublesome and unsettled, and in 1818 a new treaty was made, which has been called a compromise, to the provisions of which we have returned since the abrogation of the treaty of Washington, and on which the present dispute is commonly, but erroneously, supposed to hinge.

By that treaty of 1818 we gave up the right to take fish within three miles of certain shores, or to enter within such limit save for the purpose of obtaining "*shelter, repairs, wood, and water.*" On the other hand, we regained the right to dry and cure on certain other shores. In 1824 England, dissatisfied with the treaty of 1818, or, in other words, with the growth of American fisheries, as she had been after the treaty of 1783, set up what was known as the "headland theory," to the effect that the three-mile limit was to be measured from an imaginary line drawn from headland to headland, and was not to follow the line of the coast. The object and result of this were to exclude us from these great bays and to injure our fisheries. There was some discussion, and then the dispute died down until 1839, when the "headland theory" was revived and some seizures of our vessels were made. Controversy and correspondence ensued, which went on with the usual accompaniments of seizures and withdrawals on the part of England and renewals of interference until 1851, when England sent out a naval force and Webster declared in a speech that the Government would protect the fishermen, "hook and line and bob and sinker." Then an effort at settlement was made, and the arbitrator decided in favor of the American view as to the Bay of Fundy. This did not suit the English policy which, instigated by Canada, had aimed steadily in all this wrangling at mercantile concessions. Accordingly Lord Elgin came to Wash-

ington, and succeeded, much to his credit, and very little to ours, in negotiating a "reciprocity treaty." Thus Canada had her way, and all was quiet until 1865, when the treaty of 1854 was abrogated and the contention was renewed. Various temporary expedients were tried, and at last the Governor-General of Canada issued an order for the seizure of all American vessels fishing in Canadian waters. General Grant, who had a keen sense of American rights, and was neither feeble nor timid, sent in a message to Congress advising retaliation, which had a wholesome effect. The fishery question, however, was drawn into the Alabama negotiations and settled in the manner so disadvantageous to us which is fresh in every one's memory. The abrogation of the treaty of Washington has brought on the old contention, and the old attempt is being made to bully us into granting commercial concessions by harassing our fishermen.

Rumor has it now that the headland theory has been revived by England in the present negotiations, supplemented by some equally reasonable claims as to pilotage, and it is also rumored that she will propose to refer this doctrine, as well as our commercial rights, to arbitration. There is nothing incredible in this report, for the studied mildness of our own government must be an irresistible temptation to vigorous opponents to advance every claim they can devise, no matter how preposterous such claim may be.

Meantime international relations in general have advanced and improved with the progress of civilization since 1818. In 1822 we extended to the world the principles of maritime reciprocity, which were adopted by Great Britain in 1830. At that time the United States and England dropped their non-intercourse laws as to British North America and all other of their possessions, as was duly set forth in the proclamations issued by President Jackson and William IV. Under these principles of reciprocity have grown up what are commonly known as commercial privileges, which belong to vessels of all nations, and which allow the vessels of all nations to enter foreign ports in order to obtain supplies and engage in trade. These privileges, in a word, have become part of the international comity of the world, and are never questioned or denied except in time of war. By universal consent these privileges, unknown at the period of the treaty of 1818, were held in practice after 1830 to apply to fishermen, and

have been enjoyed by the fishermen of Canada and the United States, without let or hindrance, from 1830 until the beginning of the present difficulties.

Having thus determined the general commercial privileges accorded to fishermen of the United States under the proclamations of 1830 and the rights granted them by the treaty of 1818, let us glance at some of the cases of seizure and interference on the part of Canada within the past two years :

"In May, 1886, the schooner 'David J. Adams,' of Gloucester, in a landlocked Nova Scotia harbor, where no intention of fishing could well be imagined, was seized by the cruiser 'Lansdowne,' taken from Nova Scotia to St. John, N. B., and, without explanation or hearing, taken back again by an armed crew to Digby, N. S., where a paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the 'Adams' to be allowed to detach the writ from the mast for the purpose of reading its contents was positively refused by the provincial official in charge.

"June 2, 1886, the Dominion authorities threatened to seize American boats if they bought herring for canning.

"June, 1886, the Collector at St. Andrews, N. B., refused to allow the schooner 'Annie M. Jordan,' of Gloucester, to enter at that port, although she was properly documented as a fishing vessel, with permission to touch and trade at any foreign port during her voyage.

"June, 1886, four Gloucester vessels, the 'Martha A. Bradley,' 'Rattler,' 'Eliza Boynton' and 'Pioneer,' were warned by the Collector, at Canso, to keep outside an imaginary line, three miles outside Canso head to Point Esprit, a distance of 40 miles, this line being from 12 to 25 miles from the coast. At Prince Edward Island they were warned in a similar fashion. They were also told that they could not enter Bay Chaleur.

"June, 1886, the schooner 'City Point,' of Portland, Me., arrived at Shelburne, N. S., landed two men, obtained water, and was detained by the authorities.

"July, 1886, two American schooners visiting St. Andrews, N. B., for the purpose of purchasing herring for canning, were driven away by the cruiser 'Middleton.'

"July, 1886, the American steamer 'Novelty,' at Pictou, N. S., was denied the right to take in steam coal or purchase ice or tranship fish in bond to the United States, and she was compelled to leave without being allowed to obtain fuel necessary for her lawful voyage on a dangerous coast.

"July, 1886, the American fishing vessel 'Thomas F. Bayard,' at Bonne Bay, N. F., was threatened with seizure if she entered the port to obtain bait, or for any other transaction connected with fishery. The 'Bayard' broke up her voyage and returned home. The schooner 'Amherst' was similarly treated at Port Amherst, Magdalen Islands, and she was further threatened with seizure if she took a pilot.

"August, 1886, the 'Rattler,' of Gloucester, driven by stress of weather to Shelburne harbor, anchored in the stream just inside the harbor's entrance, where she was boarded by an officer of the Canadian cutter 'Terror,' who placed two men on board. When the storm ceased, the 'Rattler' weighed anchor to proceed home;

the two men from the 'Terror' discharged their pistols as a signal. The vessel was again boarded and threatened with seizure unless the captain reported at the custom house.

"August, 1886, the schooners 'Shiloh,' and 'Julia Ellen,' entering the harbor of Liverpool, N. S., were met by the cruiser 'Terror,' who fired across their bows and placed two armed men on board each vessel until they left the harbor.

"September, 1886, the 'Mollie Adams,' of Gloucester, put into Port Mulgrave, N. S. The vessel's water-tank had burst in the heavy weather and was rendered useless. The captain asked permission to purchase two or three barrels of water for his crew on their voyage home, about 500 miles. He was refused, and his vessel threatened with seizure if he bought the water. He had to put to sea without it, and in trying to enter another port for the same purpose a severe gale swept away his deck-load of fish and destroyed two seine boats.

"September, 1886, the schooner 'A. R. Crittenden' was denied the right to purchase water at Steep Creek, and the crew had to be put on short allowance during the voyage home.

"October, 1886, the 'Pearl Nelson,' of Provincetown, Mass., was driven by stress of weather into the harbor of Arichat, N. S., arriving late at night, when the custom-house was closed. Before the custom-house was opened next day the captain went there, and after waiting over an hour for the collector to arrive, he made his usual inward report, and asked permission to land the clothing of a sailor who had been lost overboard, and whose family resided in the vicinity. The captain was calmly informed that his vessel had been seized for allowing his crew to go ashore the night before, *before reporting at the custom-house!*

"November, 1886, the 'Mollie Adams,' of Gloucester, rescued the crew of a wrecked Nova Scotia vessel. The captain shared his purse and his slender stock of provisions with the men he had saved, and thereby ran short of food. He put into Port Medway and asked permission to purchase half a barrel of flour, or enough provisions to take his vessel and crew home. He was threatened with the seizure of his vessel 'if he bought anything whatever.' He put to sea, and made for Gloucester. On the home run his crew were short of rations for two days, and one day they were without food of any description."

What indication is there here that our fishermen have transcended any of the usual restrictions placed upon vessels to which commercial privileges are accorded? In these cases they have not even broken, except by the most forced construction in one or two instances, the provisions of the treaty of 1818, which expressly gives the right to enter for "shelter, repairs, wood, and water." They have not even had their rights under that treaty, but have been interfered with on the ground of a violation of certain arbitrary and wholly illegal regulations set up by Canada as an excuse for harassing the American fisheries.

Is it not clear to every one who takes the trouble to read these cases that they arose from no real infringements on our part of the treaty of 1818? Are there in any of these cases complicated questions of doubtful treaty constructions or of fishing rights?

Are they not, in a word, plain and sometimes brutal violations by Canada and England of the ordinary comity of nations, of common commercial privileges, and, in some instances, of the universal rights of humanity? The purpose of such high-handed action is sufficiently plain. In the words of General Cogswell, the very able representative of the Gloucester district, to whose investigations and speeches I am largely indebted: "That Great Britain pursues her present policy as of right, I have too much respect for her intelligence to believe; that she pursues it in order that she may build up the fishing industry in her own provinces; that she pursues it in order to force her fish into our ports free of duty, in order to hamper our own industry, in order to cripple our militia of the seas, and that she may raise recruits for her navy, by which she proudly boasts, 'Britannia rules the waves,' I most certainly believe. She pursues it, too, in violation of our sacred rights and privileges." The discussion and talk about fishermen's rights and three-mile limits have been stirred up merely to becloud the true issue and make the people of the United States believe that the whole thing is a technical dispute among contentious fishermen about small technical privileges. As a matter of fact, when the question is stripped of all disguises, it is perfectly simple and involves the ordinary rights of every man who goes to a foreign port on a vessel protected by the flag of the United States.

What is the remedy for such a disgraceful state of things? The country, speaking through the last Congress, said: "Retaliate;" and a resolution was passed authorizing the President to close our ports to Canadian vessels. This was the obvious, proper and dignified course, but the resolution has remained a dead letter. The administration, having seen a treaty rejected almost unanimously by the Senate, and having watched these outrages in silence and learned the opinion of the country, has now embarked on a commission to arbitrate, which nobody wanted and which nobody believes in. They discovered, after appointing commissioners, that they had no power to settle and determine these questions by commissioners, and in order to conform to the constitution, the country has been given to understand that this is a negotiation. But a change of names does not alter the intention and policy of the Government to bring about a joint arbitration, and the fundamental trouble with the scheme is that

there is nothing susceptible of arbitration, and nothing to arbitrate about. No man of courage and self-respect agrees to leave it to arbitrators to determine whether his neighbor can roll him in the gutter, if he is so minded, nor does he call in his friends to make a treaty with an opponent who has caught him by the throat. On the contrary, he retaliates sharply and effectively, and when the normal equilibrium is restored, he is ready for arbitration and not before. If Spain came to the conclusion that she would like to have our tobacco duties removed, and were to seize all our vessels going to Cuba, insult our flag, and close Cuban ports to our merchants, does any one suppose that we should invite Spanish commissioners to Washington to arbitrate? No one would dare to suggest it. Yet the position of this Canadian question is precisely the same as this supposed case. All the talk about fishermen's rights and the treaty of 1818, as has been said, is a mere blind to cover the real purpose of Canada. Give our fishermen the ordinary commercial privileges, renew to them the universal comity of nations, and the "fishery question" could be very quickly settled, either with or without commissioners.

There is no reason to blame England and Canada for their course. If they are able to get what they want by harassing our fishermen, invading our commercial privileges and violating the commonest principles of maritime reciprocity, they would be more scrupulous than is their habit if they failed to avail themselves of the opportunity. But what shall be said of our own Government, whose policy makes such actions possible? The administration "peak like John-a-dreams, unpregnant of their cause, and can say nothing," when even political expediency would seem to render such a weak attitude obviously and utterly undesirable. We have made our blunders in the past, like other people, but never before have we needlessly and feebly succumbed to the menaces and attacks of a British province.

Thus far the case has been recited in its simplest and broadest way as affecting the dignity and honor of the whole United States, for commercial privileges are common to the entire nation, and if touched at one point are touched at all. But there is another side to the matter which concerns those who are immediately affected. The direct result of the Canadian measures has been to cripple and injure the fishing interests. They have

enhanced the difficulties and risks of an honorable and manly calling, which is in its nature sufficiently perilous without artificial troubles and dangers. The particular friends of the administration, in their ardent zeal, have undertaken in the last few months to belittle the fisheries, but the industry is not one that can be lightly passed over. The fisheries of the United States, according to the census of 1880, employed 130,000 men and 6,605 vessels, and represented a capital of \$37,995,340. This includes, of course, the very important fisheries of the great lakes, which are as open to incursion by Canada as those of the Eastern States. The New England fisheries, which are chiefly involved in this contest, employed in 1880, 37,043 men, 2,066 vessels, 14,787 boats, and yield an annual product of \$14,270,393. The amount of food-fish landed in Gloucester in 1886 was 459,759 barrels. An industry which supports in one section of the country alone some 150,000 people, and which furnishes a large part of a most important article of food, cannot be neglected or overlooked, and when it is remembered that we must turn to that industry for sailors to man our ships in time of war, it has a right to demand not only the protection, but the fostering care of the Government.

Another of the highly creditable arguments advanced by the defenders of the administration is that most of the men engaged in these fisheries are aliens. It might be deemed a sufficient answer to say that these eager champions overlook the somewhat important fact that, even if the fishermen are aliens, they are covered by the American flag, and have a right to its protection. But we can afford to take the argument as it stands. Colonel Wright, in his statistical report of 1886 on the fisheries of Massachusetts, gives the number of native born Americans as 60 per cent. of all persons employed in the fisheries, and the resident fishermen as 76 per cent. To the 60 per cent. of native born fishermen must, of course, be added the natives of other countries who have been naturalized in order to determine the question of citizenship, and it is easy to see from these very recent figures, which will apply equally to all the New England States, how unfounded is the charge that our fishermen are aliens. General Cogswell, who has investigated the point with care, estimates the aliens on the fishing vessels of New England at 12 per cent. of the whole number employed, and even Mr. Manning, when Secretary of the Treasury, admitted that 78 per cent. were

American citizens. There are certainly enough Americans here entitled on the ground of citizenship to the protection of this government.

The more violent organs of the administration, however, are not content even with this. Very recently one of them gave utterance to this lofty and patriotic sentiment :

“ It would be better to buy them out (the Yankee fishermen) and set them up in some other business to keep them quiet than to be kept in a turmoil over their wretched fuss. The only way is for the Government to go serenely along and determine its policy according to the interests of the whole country, and leave the Gloucester fishermen to find out that their whining is uncalled for.”

The sentence reads as if it had been taken from some English newspaper before the war of the rebellion, but as a matter of fact it is quoted from the *New York Times*. The same journal celebrated last Christmas, probably in the interests of peace on earth and good will among men, by a long and scurrilously abusive article about the Gloucester fishermen, winding up with the statement that they were all aliens—an absolute falsehood, as has just been shown. It is almost incredible that any American editor could say such things of any class of his countrymen ; and it only shows how far people can be carried by personal politics and by partisan rancor. When Glover's regiments of Marblehead fishermen ferried Washington's army across the Delaware and marched upon Trenton on a certain bitter December night, nobody thought they “ whined.” Nor did any one find it convenient or apposite to accuse the New England fishermen of “ whining ” when they manned our ships and shed their blood both on deck and battlefield in the war of the rebellion. They are now, as they were then, a bold and hardy race of men. They do not whine, but they demand, plainly and firmly, that their Government should protect them in those rights which they share in common with all their countrymen. They are not making a “ fuss ” about the “ three-mile ” limit or any other small point. They can get all the fishing they want outside that limit, and are quite able to meet all fair competition ; but they feel that they are entitled to the ordinary commercial privileges, and that they should not be debarred from them because Canada requires a lever to compel us to make a reciprocity treaty or to alter our tariff.

The fact that they are few in number compared to the whole body of the people does not touch the question in the least. Gov-

ernor Andrew once said, "I know not what sins the recording angel may set down against me in the next world, but this I know, I have never turned my back on any man because he was poor, or because he was ignorant, or because he was black." The same doctrine holds good with nations. No self-respecting nation can afford to turn its back, not merely upon a vigorous and intelligent body of men like our fishermen, but upon the humblest of its citizens, and there is no surer test of national greatness than the care with which the safety of each individual member of the community is watched over and guarded. It was the greatest glory of Rome in ancient times, it has been one of the chief glories of England in our own time, that no risk and no expense were to be considered in defending in all his rights and wherever he might be every man who was honestly entitled to the Roman or the English name. We have a greater empire than either Rome or England, and we cannot be too jealous of the lives and safety of our citizens. The case of one man to-day seems distant and unimportant, but it may be the case of any one of us to-morrow. This protection to citizens of the republic engaged in a lawful calling is what underlies our dispute with England and Canada to-day. It is something vastly more vital than the three-mile limit or free fish or reciprocity treaties. It is the question of the defense of the rights of American citizens which have been interfered with in contravention of all commercial privileges and all the rules of international comity. It is as near and as important to the citizen of California or Illinois or Florida as it is to the Gloucester fishermen, for if the fishermen can be attacked with impunity by Great Britain some other nation may see fit to treat in like fashion the people of any other part of the country.

The ultimate solution of all these recurring troubles with Canada will be found, no doubt, in union with the United States. Such an outcome will benefit both sides, but Canada far more than us. We can afford to bide our time and await the inevitable result of the laws of political, financial, and social gravitation, for it is a case of manifest destiny. Meanwhile, American citizens must be protected, and when that is done, and not before, we can arbitrate and make treaties with our neighbors if we choose. As Washington said a hundred years ago, "Whenever we shall have an efficient government established, that government will surely impose retaliating restrictions, to a certain degree, upon the trade of Britain."

HENRY CABOT LODGE.